IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE SEVENTEENTH DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE GODA RAGHURAM

WRIT PETITION NO : 23207of 2003

Between:

M/s Kirti Enterprises, rep. by its Managing Partner

K.Yogeshwar Reddy, s/o Ram Reddy, aged about 45 years

R/o 324/2RT, S.R.Nagar, Hyderabad.

..... PETITIONER

AND

1. The Government of Andhra Pradesh, Agriculture &

Cooperation (COOP-III) Department, rep. by its Principal

Secretary, Secretariat, Hyderabad.

2. The Managing Director, The Charminar Cooperative Urban

Bank Ltd., 12-2-831/9, 1st Floor, Miraz Commercial Complex,

Mehdipatnam, Hyderabad-28,

3. The Cooperative Sub Registrar/Sale Officer, The Charminar

Cooperative Urban Bank Ltd., 12-2-831/9, 1st Floor, Miraz Commercial Complex, Mehdipatnam, Hyderabad-28.

4. R.Venkateshwarlu s/o R.Bhadraiah, 60 years, Occ: Retired Employee, R/o Flat No.202, Sai Santosh Residency, Street No.I,

Taranaka, Hyderabad.

(R-4 is impleaded as per court orders dated 19.7.2004 in W.P.M.P.No. 8113 of 2004)

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue an appropriate writ, order or direction in the nature of Mandamus declaring

a. G.O.Rt.No. 877, Agriculture & Cooperation (Coop.III) Department, dated 14.10.2003, as arbitrary, illegal, without jurisdiction, ultravires the provisions of the A.P. Cooperative Societies Act, 1964 and ultravires the powers of the 1st respondent ;

b. The endorsement dated 28.6.2003, made by the 3rd respondent as illegal, without jurisdiction and issue a consequential direction to the 2nd respondent to consider the petitioner's application dated 26.7.2003 and accept the offer made by him in the said letter in terms of Clauses 5(d) of G.O.Ms.No.4, Agriculture and Cooperation (Coop.III) Department, dated 27.2.2003.

For the Petitioner: Mr. C.V.Mohan Reddy, Advocate,

For the Respondent No.1: Government Pleader for Cooperation,

For the Respondent No.2&3: Mr. Nooty Rama Mohana Rao, Advocate

For the Respondent No.4: Mr. V.Venugopala Rao, Advocate

The Court Made the Following :

:: ORDER ::

M/s Kirti Enterprises has filed the writ petition assailing the validity of G.O.Rt.No. 877, Agriculture and Cooperation (Coop.III) Department, dated 14.10.2003; seeking a declaration of the endorsement of the 3rd respondent dated 28.6.2003, as illegal and a consequential direction to the 2nd respondent to consider the petitioner's application dated 26.7.2003 and to accept the offer as contained in the said application in terms of Clause 5(d) of the G.O.Ms. No.4, Agriculture and Cooperation (Coop.III) Department, dated 27.2.2003.

The petitioner obtained a loan of Rs.60 lakhs from the Charminar Cooperative

Urban Bank Limited (for short 'the Bank') for its business operations. As per the terms of the loan agreement the petitioner was required to repay the loan in 35 monthly instalments of Rs.2,25,400/- each with interest @ 21% PA. The loan agreement was executed on 14.9.1998. Towards collateral security the petitioner pledged a shop bearing No. 3-4-757, Palem Towers, Barkatpura, Hyderabad and house bearing No.12-8-424, 425 and 426 at Modis compound, Mettuguda, Secunderabad. The petitioner defaulted in the repayment of the loan as per the agreed instalments. Consequently the bank initiated proceedings for recovery of Rs.67,02,718/- by way of ARC No.8/99/OSD. Eventually an award u/Sec. 61 r/w Sec.62(2) of the AP Cooperative Societies Act, 1964 (for short 'the Act') was passed on 26.2.2001 directing repayment of the sum of Rs.67,02,718/- with interest @ 21% PA w.e.f. 31.3.1999. As the petitioner did not satisfy the award the Bank filed E.P. No. 154 of 2001 before the competent authority. A demand notice dated 26.4.2001 was issued and thereafter the movable properties of the petitioner were attached by proceedings dated 10.5.2001. Another demand notice dated 26.4.2001 was issued for attachment of the immovable properties mortgaged. Thereafter by the order of the Deputy Registrar concerned, dated 7.7.2001 a notice was issued for conduct of sale of the immovable properties which were scheduled on 4.2.2002 in respect of the house property in Mettuguda and on 5.2.2002 in respect of the shops. The auction was admittedly held in so far as shops are concerned and the sale in favour of 2 individuals – auction purchasers was confirmed by orders in E.P. No.154 of 2001, dated 13.3.2002. The petitioner assailed the confirmation of the sale of the shops before the Cooperative Tribunal, Hyderabad, in CTA SR No. 5931 of 2002, which was rejected by the order of the Tribunal dated 20.8.2002. As against this order of the Tribunal the petitioner preferred Writ Petition No. 19706 of 2002, which is stated to be pending.

The auction of the house property in Mettuguda was held on 5.2.2002. According to the petitioner the sale pursuant to this auction was not confirmed as the highest bidder failed to comply with the terms of the auction proceedings. The property was again put to auction but did not go through on account of non-availability of bidders.

On 27.2.2003 the 1st respondent issued G.O. Ms. No.4 in purported exercise of powers u/Sec.115-B(i) of the Act notifying the scheme of reconstruction of the Bank. G.O.Ms. No.4 was issued by the 1st respondent with the prior approval of the RBI. As per the annexure to G.O.Ms.No.4 the scheme comes into force w.e.f. 3.3.2003.

Paragraph 5 of this annexure sets out the guidelines for collection of advances made by the Bank. Paragraph 5 reads as under:

"5. Collection of advances :-

a. *The bank will undertake simple interest on all loan accounts, from the date of disbursement to the date of reconstruction @ 18% p.a. simple and arrive at the crystallized amount of overdue principal and interest after adjusting the repayments made by the borrower till date.*

b. *The borrowers, who opt for OTS and settle the account by paying the entire crystallized amount in one lumpsum during the currency of OTS scheme will be given a further rebate of 25% on the interest component in the crystallized amount.*

c. *Those who pay 20% upfront and balance 80% of the crystallized amount due in account with a period of 6 months will get a further rebate of 10% on the interest component payable by them.*

d. *The borrowers not availing the above mentioned 2 option will have their accounts rescheduled to be payable in 35 monthly instalments which will carry interest @ 15% p.a.*

e. *The interest waiver/concessions will in no case make the outstandings in the borrowers account negative.*

f. *The share capital contribution of the loanee will be adjusted against his loan account after taking borrowers consent.*

g. *In case any borrowers fails to pay the agreed amounts, the amount paid/collected by the Bank will be adjusted against interest dues first and then against the principle thereby revoking the OTS given earlier.*

h. *The bank will design suitable documentation covering the above points and enter fresh agreements, while sanctioning the OTS."*

The petitioner did not avail the options under clauses (b) and (c) of Paragraph 5 above. However, claiming entitlement under Paragraph 5(d), the petitioner submitted an application dated 28.6.2003 to the Managing Director of the Bank requesting consideration of his case as per the terms of G.O.Ms. No.4 for one time settlement. On this application the 3rd respondent – the Cooperative Sub Registrar-cum-Sale Officer of the Bank, endorsed that the petitioner's application could not be considered as the date of auction was already fixed and the management of the Bank is not ready and willing to accept the 3rd option under G.O.Ms. No4. the petitioner again approached the Managing Director – R2, by another application dated 26.7.2003. According to the petitioner this application is pending.

The 1st respondent issued G.O.Rt. No.877 dated 14.10.2003 purporting to be clarifications with respect to settlement of claims, which the petitioner contends amount to amendment of the scheme of reconstruction as spelt out in G.O.Ms. No.4.

The grievance of the petitioner is that the benefit of the 3rd option of a one time settlement that accrued to the petitioner under G.O.Ms. No.4 was arbitrarily withdrawn by the 1st respondent under the guise of a clarification, in G.O.Rt. No.877. The petitioner challenges G.O.Rt. No.877 on the ground that it constitutes an amendment to G.O.Ms. No.4 which is the statutory scheme formulated by the 1st respondent exercising power u/Sec.115(B)(i) of the Act after obtaining the previous sanction of the RBI and that in the circumstances the so called clarification in G.O.Rt. No.877 is invalid as no previous sanction of the RBI was obtained before issuing G.O.Rt.No.877. In elaboration of this contention the petitioner pleads that as the clarification restricts the applicability of the scheme of settlement of claims of the loanee-defaulter as set out in G.O.Ms. NO.4, prior sanction of the RBI is required before issuance of orders as contained in G.O.Rt.No.877. It is also contended that as there is no distinction between a borrower/defaulter against whom award proceedings are pending and those against whom such proceedings have become final and executions are pending, the distinction made in G.O.Rt. No.877 disapplying the benefits to defaulters in whose cases award proceedings have become final and constitutes hostile discrimination and is therefore invalid. The petitioner also contends that the action of the 3rd respondent in rejecting his first application (dated 28.6.2003) on the ground that the 2nd respondent is not agreeable to a one time settlement, is incompetent since the 3rd respondent is not competent to reject the application addressed to the Bank.

The Chief Recovery Officer of the Bank has filed a counter affidavit on behalf of the 2nd and 3rd respondents. To the extent relevant and material to the issues arising in this writ petition, the counter affidavit states that the 1st respondent notified the scheme of reconstruction in G.O.Ms. No.4, with the previous sanction of the RBI. Since the period available for repayment of the rescheduled amount as per the 3rd option (vide Para 5(d) of G.O.Ms.No.4) was 35 months, the Committee of Persons-in-charge appointed to look after the affairs of the Bank, proposed to the 1st respondent to reduce the number of monthly instalments. Thereupon the 1st respondent issued G.O.Ms. No.117 dated 21.5.2003 reducing the number of monthly instalments for repayment under the 3rd option, to 24. This amendment was made during the currency of the one time settlement period which was up to 30.6.2003. The scheme under G.O.Ms. No.4 was notified by the 1st respondent primarily to safeguard the

interests of the depositors of the Bank and not to benefit the chronic defaulters who are in a way responsible for the current State of affairs of the Bank. As several problems cropped up in implementing the scheme in G.O.Ms. No.4, the Bank sought clarifications from the various agencies including the RBI. At a meeting attended by the RBI representatives, the Chairman, Expert Committee on Revival of Sick Urban Cooperative Banks in Andhra Pradesh, the Registrar of Cooperative Societies, representatives of the Bank, the Chartered Accountants of the Bank and other similar banks, the RBI conveyed its approval to a modification of its scheme in G.O.Ms.No.4 which led to the issuance of G.O.Rt. No.877. The terms of G.O.Rt.No.877 and the clarifications issued thereunder are in consultation with various authorities including the RBI. Accordingly the benefits under G.O.Ms. No.4 are not available to such of those defaulters against whom awards have been passed and execution proceedings are pending. As the orders in G.O.Rt.No.877 have been issued with the knowledge of the RBI authorities and pursuant to discussions at a meeting in which representatives of the RBI also participated there is no infirmity in G.O.Rt.No.877. Accordingly and in view of the clarifications issued in G.O.Rt.No.877 the petitioner is not entitled to the benefits of a one time settlement under G.O.Ms. No.4.

In the counter affidavit filed on behalf of the respondents 2 and 3 it is further stated that the petitioner defaulted in repayment of the loan obtained and did not also honour the award passed u/Sec.61 of the Act, dated 26.2.2001. One of the guarantors Smt K.Susila Devi preferred an appeal against the award in ARC 8/99 dated 26.2.2001 before the Cooperative Tribunal, Hyderabad, by way of CTA No.65 of 2001. The Tribunal granted stay on 30.4.2001 on condition that 50% of the amount awarded should be deposited. As the condition was not complied with the stay stood vacated. The petitioner also preferred an appeal in CTA No. 164 of 2001 against the award in ARC No.8 of 1999. The Tribunal by the order dated 27.8.2001 granted stay of execution on condition that the petitioner should deposit 50% of the amount before 30.9.2001. This condition was not complied with and the stay stood vacated. The appeal is however pending in the Tribunal. Pursuant to E.P.No.154 of 2001 the two shops in Palem Towers that were mortgaged to the bank were in public auction on 5.2.2002 and the sale certificate dated 13.3.2002 was also issued in favour of the auction purchasers Smt. N.R.Shah and Smt. B.S.Shah. As against

the issuance of the sale certificate the petitioner preferred CTA SR No. 5931 of 2002 which was rejected on 8.8.2002 as the appeal was instituted beyond the period of limitation. The petitioner challenged the Tribunal's order dated 8.8.2002 in W.P.No. 19706 of 2002, which is pending. The counter affidavit further states that the petitioner applied for a one time settlement by 26.7.2003 in terms of G.O.Ms. No.4. On its non-consideration he preferred W.P.No. 16763 of 2003 in which the petitioner failed to mention the pendency of W.P. No. 19706 of 2002 filed by him. This court dismissed W.P.No.16763 of 2003 by an order dated 11.8.2003. Without mentioning the fact of dismissal of W.P.No. 16763 of 2003 he filed the present writ petition. On behalf of this respondent it is contended that in view of suppression by the petitioner of the material facts in particular as to the dismissal of W.P.No. 16763 of 2003 by the order dated 11.8.2003, this writ petition should be rejected. It is further pleaded that the properties in Mettuguda mortgaged with the bank were put to public auction on 4.2.2002, 27.8.2002, 3.9.2002, 4.0.2002, 24.7.2003, 31.7.2003, 30.9.2003 and finally 7.10.2003. Eventually in the last auction, the property was knocked down in favour of one Mr. R.Venkateswarlu (R4 in the writ petition) for Rs.27,20,000/-. The 4th respondent paid the entire amount by 20.10.2003. It is also asserted by this respondent that when the auction of the Mettuguda property was earlier conducted on 4.10.2002 it went in favour of one Ms R.Rama Devi, who deposited 15% of the amount. Ms Rama Devi was also a depositor in the Bank and sought setting off of the remaining amount, by filing W.P. No.21564 of 2002. The petitioner got himself impleaded in the said writ petition and the writ petition was eventually dismissed. As Ms Rama Devi could not deposit the entire amount the auction was eventually aborted. Pleading the above circumstances and contending that as the petitioner continues to be defaulter, he is not entitled to the benefits of G.O.Ms.No.4 in view of the order in G.O.Rt.No. 877 nor the indulgence of this court, dismissal of the writ petition is sought.

It requires to be noticed that paragraph-2 of G.O.Rt.No.877 clearly records that the clarifications contained therein have been issued after discussion with the officials of the RBI and the other authorities mentioned therein. In respect of the 3rd option vide Clause (5)(d) of the annexure to G.O.Ms. No.4, a clarification was sought and a clarification issued in G.O.Rt. No. 877. Accordingly it was clarified that clear distinction should be made between the cases already concluded with the passing of an award and are ripe for execution and cases pending adjudication at different

stages prior to the passing of an award, before the competent authority. As regards the cases pending adjudication, the bank and the borrowers should jointly move the appropriate authority to issue an appropriate award in terms of the option that the borrower/defaulter has exercised. In other cases where the appropriate competent authority has already passed an award and it is to be executed, the question of the defaulting borrowers claiming an option and exercising a right for any of the options would not arise and the bank would be at liberty to proceed with the recoveries of dues on the basis of the award already passed. It was made clear in G.O.Rt. No.877, that the passing of an award estoppes the defaulter/borrower from claiming the benefits of any of the options. Even as regards a borrower who opted for the options but subsequently failed to pay the agreed amounts, it was clarified that in such cases as per Clause 5(g) of the G.O.Ms. No.4, the benefits of the package get automatically revoked and the amounts recoverable from the borrowers would be calculated as per the terms of the original loan sanctioned and interest due as per the original agreement conditions i.e., as per the agreement prior to the package.

Paragraph-5 of the annexure to G.O.Ms.No.4 does not expressly or by any compelling implications contain any instruction as to whether the rescheduling of the interest on loan accounts or sanction of OTS is applicable to all the borrowers. A learned single Judge of this court in judgment dated 7.1.2004 in W.P. No. 23069 of 2003 and batch pointed out that the true scope and effect of the reconstruction scheme contained in G.O.Ms.No.4 dated 27.2.2003 is only that a borrower may apply for a OTS as one of the options available and no borrower has any right to compel the bank to sanction the OTS. As stated in G.O.Rt.No.877 dated 14.10.2003 the Bank sought clarification with regard to the true meaning and scope of Paragraph-5 of the annexure to G.O.Ms.No.4, as to how to deal with cases of recovery of dues where cases have already been filed and are pending recovery at different stages before the competent authority whereafter the defaulting borrower comes forward to exercise one of the options available in Paragraph-5 of the G.O.Ms. No.4. It is in this context that the State Government, after consultation with the interested parties as also with the officials of the Reserve Bank of India and the Registrar of Cooperative Societies, issued the clarifications in G.O.Rt. No.877. As per the clarification where the appropriate competent authority had passed an award which is to be executed, the borrower who is determined to be a defaulter and against whom an award is passed would not be entitled to exercise any option and the Bank would be at liberty to proceed with the recovery of dues on the basis of the

award already passed. In so far as this clarification is concerned, in the considered view of this court it does not run counter to the contents of G.O.Ms.No.4. These clarifications are only in the nature of guidelines offered to the 2nd respondent-Bank in the mater of dealing with the options exercised by the defaulting borrowers under G.O.Ms.No.4. This is the true nature of G.O.Rt.No.877 which is also made explicit in the said Government Order. Where the Bank has proceeded against the borrower for recovery under the provisions of the Act before the competent authority, such conduct of the Bank clearly signals a decision that it has decided to deal with the defaulting borrower in accordance with law and it has therefore put the legal process in motion. In such circumstances paragraph-5(d) of the annexure to G.O.Ms. No.4 is susceptible of a compelling interpretation that its provisions are applicable only to such of those borrowers against whom no proceedings have been initiated and awards passed by the competent authority. This implicit meaning of the provisions of paragraph-5(d) are made explicit in G.O.Rt.No.877. It is thus clarificatory and not amendatory.

The contention of the petitioner that the distinction drawn (in G.O.Rt.No.877) between borrowers against whom awards have been passed by the competent authority and other borrowers is an invidious classification, does not commend acceptance by this court. The passing of an award pursuant to a legal process initiated by the Bank for recovery of the debts due to it, is a relevant criterion that marks a legitimate distinction between borrowers. Borrowers simplicitor and borrowers who have suffered an award do constitute distinct categories and could validly be treated as such. This contention is therefore rejected.

On the above analysis this court find no merit in the writ petition. The writ petition is accordingly dismissed. The interim order in WPMP No. 29127 of 2003 dated 4.11.2003 shall sand dissolved. No order as to costs.

Date: 17.02.2005 ----------

Pvsn Justice G.Raghuram

..... REGISTRAR

To

1. The Principal Secretary, Government of Andhra Pradesh, Agriculture &Cooperation (COOP-III) Department, Secretariat, Hyderabad.

2. The Managing Director, The Charminar Cooperative Urban

Bank Ltd., 12-2-831/9, 1st Floor, Miraz Commercial Complex,

Mehdipatnam, Hyderabad-28,

3. The Cooperative Sub Registrar/Sale Officer, The Charminar

Cooperative Urban Bank Ltd., 12-2-831/9, 1st Floor, Miraz Commercial Complex, Mehdipatnam, Hyderabad-28.

4.Two CCs to the Government Pleader for Cooperation, High Court buildings, Hyderabad (OUT)

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